



Judgment exposes property managers

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A High Court judgment against a property management company has opened the way for a flood of legal claims.

The decision, in Auckland, ordered Strata Title Administration (Strata) to pay \$50,518 to body corporate number 211747. Costs are still to be decided.

The judgment is expected to be followed by further legal action to be taken by other body corporates under Strata's management.

The body corporate group said Strata, run by Michael Chapman-Smith, withheld body corporate funds and refused to step down as body corporate secretary, claiming that technically it still held the position.

In his decision, Justice Roderick Joyce said "at no point was [Strata] ever entitled to resist the demand of [the body corporate] ... for the return of monies comprising the fund required of a body corporate ... held, quite obviously, in trust for it on that account."

Strata was appointed secretary in May last year. The body corporate said it dropped Strata in September and has not used Strata for more than 10 months now.

Strata disputed the fact it had been properly removed as secretary.

In his judgment Justice Joyce said a problem had been Strata's "fixation" with the circumstances of Strata's alleged usurpation as secretary.

"Strata Title seems to have seen its role as rather larger than can be found in law to be warranted, or than sensibly should be conceded."

The National Business Review has learned of further legal action to be taken against Strata by body corporate groups.

On September 29 the body corporate for Parnell's Waterford Apartments will Tuscany Towers 3 take its case against Strata to the Auckland District Court.

The body corporate of New Lynn, Auckland, apartments Tuscany Towers will take its case to the High Court at Auckland on November 3.

One body corporate member said he knew of at least six body corporates planning to take legal action over the next month.



The Tuscany Towers case involves five unit owners and its body corporate. In this case Strata and Ede Investments, now in receivership, are named as first and second defendants.

The Tuscany Towers body corporate was unhappy with Strata's performance but Strata refused to step down.

Strata said under the body corporate rules registered when it was appointed to Tuscany Towers in 1998 it needed unanimous resolution of body corporate owners before it could be removed as secretary.

Strata then issued a levy to the body corporate owners for 2003 and threatened legal action if the levy was not paid.

The body corporate said the levy was unenforceable and illegal because it had already voted to drop Strata as secretary in a meeting on November 18.

Another body corporate member from a separate apartment block said even after his body corporate had voted by a majority to remove Strata the company still refused to stand down as secretary.

Questions about Strata's performance as a property manager have also been raised.

One disgruntled tenant claimed the company was "useless."

"They deliberately obfuscate, if not lie, when you try to get the simplest problems attended to.

"I'm still trying, 18 months down the track, to get an internal leak fixed. Meanwhile, I continue to pay them more than \$1000 a year [in body corporate fees]."

In June 1989 Strata's Mr Chapman-Smith was fined \$7500 by the Real Estate Institute Licensing Board for misconduct and for misleading the institute.

TUSCANY TOWERS: At the centre of a precedent-setting court case over body corporate management

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